

B1040 (FORM 1040) (12/15)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Wilson Andrade	DEFENDANTS DITECH FINANCIAL LLC	U.S. BANKRUPTCY COURT 2018 FEB 12 P 4:02
ATTORNEYS (Firm Name, Address, and Telephone No.) Pro se	ATTORNEYS (If Known)	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) This adversary proceeding is a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2)(f)(i). 11 U.S.C. §§ 105, 362(k), 506(a) and (d) and 1322(b)(5) and 28 U.S.C. §§ 1334 and 157, 28 U.S.C. § 1344		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<p>FRBP 7001(1) – Recovery of Money/Property</p> <p><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other</p> <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <p><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property</p> <p>FRBP 7001(3) – Approval of Sale of Property</p> <p><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)</p> <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <p><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)</p> <p>FRBP 7001(5) – Revocation of Confirmation</p> <p><input type="checkbox"/> 51-Revocation of confirmation</p> <p>FRBP 7001(6) – Dischargeability</p> <p><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny</p> <p style="text-align: center;">(continued next column)</p> <p>FRBP 7001(6) – Dischargeability (continued)</p> <p><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other</p> <p>FRBP 7001(7) – Injunctive Relief</p> <p><input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other</p> <p>FRBP 7001(8) Subordination of Claim or Interest</p> <p><input type="checkbox"/> 81-Subordination of claim or interest</p> <p>FRBP 7001(9) Declaratory Judgment</p> <p><input type="checkbox"/> 91-Declaratory judgment</p> <p>FRBP 7001(10) Determination of Removed Action</p> <p><input type="checkbox"/> 01-Determination of removed claim or cause</p> <p>Other</p> <p><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa et.seq. <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)</p>		
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Wilson Andrade	BANKRUPTCY CASE NO. 16-12449	
DISTRICT IN WHICH CASE IS PENDING DISTRICT OF MASSACHUSETTS	DIVISION OFFICE Boston	NAME OF JUDGE Hon. Frank J. Bailey
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF <i>Wilson Andrade</i>	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>Wilson Andrade</i>		
DATE 2/12/2018	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Wilson Andrade	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
www.flmb.uscourts.gov

In re:
WILSON ANDRADE;
Debtor(s)

WILSON ANDRADE,
Plaintiff(s)
vs.
DITECH FINANCIAL LLC.
Defendant

Case No.16-12449
Initial Chapter 7
Converted To Chapter 13

Adv. Proc. No: _____

U.S. BANKRUPTCY COURT
2018 FEB 12 P 3:52

**VERIFIED ACTION TO DISALLOW CLAIM 3 FILED BY
DITECH FINANCIAL LLC AND AVOID LIEN**

COMES NOW, Plaintiff, WILSON ANDRADE; (hereinafter "ANDRADE"), and sues Defendant DITECH FINANCIAL LLC ("DITECH") and allege the following:

JURISDICTIONAL ALLEGATIONS

1. This is an adversary proceeding brought pursuant to 11 U.S.C. §§ 105, 362(k), 506(a) and (d) and 1322(b)(5) and 28 U.S.C. §§ 1334 and 157.
2. Jurisdiction over the subject matter of this adversary proceeding is conferred upon the court by 28 U.S.C. § 1344.

3. This adversary proceeding is a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2)(f)(i).

PERSONAM JURISDICTION OVER THE PARTIES

Defendant, DITECH FINANCIAL LLC is a LIMITED LIABILITY COMPANY with its headquarters located at 1100 Virginia Drive Suite 100A Fort Washington, PA 19034. Defendant may be served with process of this court upon Mr. Anthony N. Renzi, President, or upon any officer or authorized agent. This defendant will be referred to as “DITECH” and the alleged misconduct by DITECH was done on its own behalf in this action.

VENUE ALLEGATIONS

1. Venue for all claims lies in the District of Massachusetts since Plaintiffs’ claims arose from acts of the Defendants perpetrated therein or perpetrated on a United States Citizen and a Massachusetts resident through the phone or mail system.

FACTS

A. The Procedural History of This Action

2. On 6/28/16, (the “Filing Date”) the Debtor WILSON ANDRADE; (hereinafter “ANDRADE” (the “Debtor”) filed a notice of conversion petition for relief under Chapter 7 of Title 11 U.S.C. §101 et seq. with this Court and an Order for relief was entered.
3. On or about 3/24/2017, ANDRADE filed a Notice of Conversion to Chapter 13.
4. On or about 3/30/2017, the chapter 13 trustee conducted the Debtor’s 341(a) Meeting of the Creditors at the United States Bankruptcy Court, District of Massachusetts.

5. On 4/27/2017, the Debtor filed a chapter 13 plan of reorganization. (See ECF No. 58).
6. The Debtor owns and continues to own the property located at 99A Linwood Ave., Melrose Mass 02176 (the “Property”).
7. On or about 7/26/2017 DITECH filed a proof of claim.
8. On or about 8/24/2017, ANDRADE filed an objection to the proof of claim.
9. DITECH replied to ANDRADE’s objection to the proof of claim.
10. On or about 1/11/2018 a hearing was held on DITECH’s and ANDRADE’s objection thereto.
11. At the hearing, the Court found that DITECH did not meet its burden of proof as to ANDRADE’s objection to the proof of claim.
12. The Court directed the filing of this Adversary proceeding. (*see Transcript*)

WHEREFORE,

for all of the reasons stated herein above, the Plaintiff avers that the Proof of Claim 3 should be disallowed and expunged.

CONTINGENT
COUNT II

Declaratory Judgment for a Void Lien
under 11 U.S.C. 506(d)

13. The Plaintiffs’ repeat, reiterate and re-allege paragraphs 1 through 12 with the same force and effect as if fully set forth at length herein.
14. Section 506(d) of the United States Bankruptcy Code (the “Code”) provides, in relevant part:
 - (a) To the extent that a lien secures a claim against the debtor that is not an

allowed secured claim, such lien is void, unless—

- (1) such claim was disallowed only under section 502(b)(5)¹ or 502(e)² of this title; or
- (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.” 11 U.S.C. § 506(d)(1)-(2).
 - a. None of the exceptions to 11 U.S.C. 506(d) applies to the Court’s disallowance of Defendants’ Proof of Claim.

WHEREFORE,

to the extent that the Proof of Claim by Defendants DITECH are disallowed and do not fall under any of the above exceptions, the alleged liens claimed by Defendants on Plaintiff’s property should be declared void under 11 U.S.C. 506(d).

COUNT III

Sanctions and Damages under 11 U.S.C. § 105(a) as against All Defendants

15. The Plaintiffs’ repeat, reiterate and re-allege paragraphs 1 through 14 with same force and effect as if fully set forth at length herein.
16. Section 105(a) of the Code provides as follows:
 - (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. 11 U.S.C. § 105(a).
17. The Court should impose monetary sanctions against the Defendants under its inherent powers under 11 U.S.C. § 105(a) as a result of the Defendant’s egregious conduct and filing of false fabricated documents with this court.

18. Such insistence by the Defendants on continued filing of false documents in a court of law for the purpose of deceiving the Debtor, the Chapter 13 Trustee, the Creditors, and the Federal Bankruptcy Court should not be allowed.
19. The Plaintiff implores this Court to make use of its inherent powers and do something to end the continued practices of using false documents and forged note indorsements.

WHEREFORE, Plaintiffs pray that the Court grant the relief requested herein and issue a Declaratory Judgment and Order holding (1) the Proof of Claim by Defendant be disallowed and expunged; (2) the alleged lien of Defendant on Plaintiff's Premises should be declared void under 11 U.S.C. 506(d); (3) awarding the Plaintiffs' actual damages, attorneys' fees, costs, expenses and disbursements (4) Imposing monetary sanctions on Defendants; (5) and for such other and further relief as to the Court may seem just and proper.

Dated: February 12, 2018

Respectfully presented,



Wilson Andrade

VERIFICATION OF CLAIM

DECLARATION of Wilson Andrade

I, Wilson Andrade, pursuant to 28 U.S.C. § 1746, hereby declare the following;

I am the Plaintiff in this action.

This Declaration is based upon my personal knowledge and belief, and if called upon as a witness in this matter I could competently testify to the facts as set forth herein.

I have read the foregoing statement of claim and have examined the exhibits referenced therein. The facts stated in the state of claim are true and correct. The exhibits are true and fair copies of the recited instruments.

The statements in this ADVERSARIAL COMPLAINT are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 12, 2018

By: 
Wilson Andrade